



May 6, 2005

On The Floor

Floor Statement, Representative Steve King (R-IA), 5/4/05

Noteworthy

**MEDIA ADVISORY:
Cornyn to Mark 4-Year Judges Anniversary with Hispanic Leaders**

Washington, D.C.—Senator John Cornyn (R-TX) will hold a press conference Monday, May 9, at 11 a.m., on Capitol Hill in the Senate Swamp (Russell Park), with Hispanic leaders to mark the four-year anniversary of President George W. Bush's original judicial nominations, including filibustered appeals court nominees Priscilla Owen (5th Circuit) and Miguel Estrada (D.C. Circuit, withdrawn). Supporters from the Hispanic community will call for an end to the unprecedented judicial obstruction and back Majority Leader Bill Frist's efforts to restore precedent for fair, up-or-down votes for all judicial nominees on the Senate floor.

WHO: Senator John Cornyn (R-TX)
Robert de Posada, President, The Latino Coalition
Rev. Miguel Rivera, National Coalition of Latino Clergy/CONLAMIC

WHAT: Press Conference

WHERE: Senate Swamp - Russell Park
(Constitution & Delaware, across from the Russell Senate Building)
Rain Location: Hart Senate Building, Room 902

WHEN: Monday, May 9, 11 a.m.

Contact:

Elizabeth Keys, SRC, (202) 224-2928

Don Stewart, Senator Cornyn, (202) 224-0704

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“Mr. Speaker, I appreciate this opportunity to address the House. This issue before us in this discussion this evening, Mr. Speaker, is the issue of an impending constitutional crisis that I believe is taking place over in the other body, and it is something that has been dealt with and worked with and rolled around by the Senate with regard to the confirmation of the President's appointments to the judicial branch of government. It is an unprecedented use of the Senate rules with regard to filibusters.

“About 2 1/2 years ago, something like that, this process began, and it began with a gentleman that was appointed to the D.C. Court of Appeals. His name was Miguel Estrada, a very, very highly qualified individual, an immigrant from Honduras, someone who English was his second language. He learned that, studied hard, and worked his way up through the process. He was very, very highly qualified.

“But as highly qualified as he was, he was also apparently a political threat to the minority on the other side, Mr. Speaker. So Miguel Estrada hung on the vine because of this unprecedented utilization of the Senate rules called filibuster, requiring 60 votes to gain cloture so that they could go to a vote on the floor of the Senate.

“In the history of this country, Mr. Speaker, there has never been, until these last 2 to 3 years, that rule, the rule of the filibuster used against judicial nominees when that nominee had a majority of the votes on the floor of the Senate. The unprecedented use of that hung Miguel Estrada on the vine for 28 months and 5 days, where he finally could not stand it any longer. He had to get on with his life. He had to make a living, had to take care of his family, and so he withdrew his name.

“I think that should have been lesson enough, but what happened was that the minority in the other body continued with the filibuster process. They held up a good number of the President's nominees, and I believe that number was 10. Today, the President has pledged to reappoint those nominees that were held up in the 108th Congress, and so now those names are before the Senate again.

“In speaking of this impending constitutional crisis, I would also, Mr. Speaker, address the situation and ask that we remember the nomination process for Justice Thomas, and the long, drawn-out grilling affair that was used on him when he was finally confirmed by the Senate by a majority vote. That process and what this country went through was an agonizing thing. It was an embarrassment to the dignity of the United States that we would bring out all those details. Yet now we have a jurist who sits there and whose opinions I read, respect, admire and appreciate. He is a Justice who reads the

Constitution, understands the letter of the Constitution, the intents of the framers, the effect of the Constitution and its controlling factors within our laws and the interpretation of congressional intent.

“I appreciate that in a justice, and apparently some of the other side of the aisle do not, so they have been filibustering this second round of appointments by our President in this unprecedented effort.

“Now it does a number of things. It puts us into this pending constitutional crisis because we are always one heartbeat away from a vacancy on the Supreme Court. We are always one heartbeat away from another national circus and confirmation like we saw with Justice Thomas. This case, though, it would be even more intense, it would be more difficult. It would be fought out more intensely, and that one heartbeat away or one retirement announcement away, one that some of us do anticipate could happen fairly soon, within the next few weeks or the next couple of months, if that takes place, these appointees that are hanging on the vine now that are held up by a Senate rule, a Senate rule that I believe contravenes the Constitution, will become secondary issues and the vacancy on the Supreme Court will become the primary issue.

“And if this precedent that they are seeking to establish is allowed to stand, then a minority in the United States Senate will control who is nominated and who is confirmed. I will say they will have influence on who is nominated and they will control who is confirmed for all of our courts in this land.

“We know that it is difficult to get judges confirmed that rule on the letter of the Constitution, the letter of the law, the intent of the Framers, and the intent of Congress.

“As we sit here with this impending constitutional crisis, this filibuster over on the Senate side, I would ask the body to take a look at the Constitution itself. And if we look to the directions that we have that are framed within the Constitution and ratified by the people, that would be Article I, section 5, it says, “Each House may determine the rules of its proceedings.” One might read that and conclude that the Senate can have their filibuster rules and they can hold up the judicial appointments if they so choose, but the Senate rules cannot contravene the Constitution. They cannot be outside the Constitution. We are all bound by the Constitution. We take an oath to uphold the Constitution of the United States.

“I would say that the controlling factor is not that each body, each House will establish its own rules, but Article II, section 2, where it says, and I think I should read this for the body, “He shall have power,” meaning the President, “by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur,” and that is one specific time where we have more than a simple majority.

“There are two others in the Constitution. Continuing to quote, “and he shall nominate, and by and with the advice and consent of the Senate, shall appointment ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of

the United States, whose appointments are not herein otherwise provided for, and which shall be established by law.

“So, Mr. Speaker, advise and consent of the Senate is the controlling constitutional question here. Certainly there is no shortage of advice from the Senate. We will concede they can have all of the advice they would like to deliver to our Commander in Chief and chief executive officer of the United States. We will concede that. They deliver that consistently. It is the consent portion that I object to because under consent, all analysis of the definition of consent is to a simple majority of the United States Senate, not a super majority. When this Constitution requires a super majority, it defines that in this Constitution without exception. It is a simple reading of the Constitution. The United States Senate needs to provide an up or down vote for these nominees that the President has put before them. They are qualified. They have a majority vote on the floor of the Senate. They are being held up by a Senate rule that contravenes the Constitution and it denies the representation of the people who elected the majority members of the United States Senate their voice.

“That is the essence of this, Mr. Speaker.”

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